Dating A Robus (16-213-8000		982.1(20)
P.O. Box 22704 Kansas City, MO 64113  TELEPHONE No. 816-213-8000  ***MALADOREST (ORNOW)** ***XTONORY FOR JOWN ADDION, In Pro Per SUPERIOR COURT of CALIFORNIA, COUNTY OF SUMMER ADARDESS, CHT. MOZE CODE SAUCH UNDER HALL OF JUSTICE  **PLANTIFE** Damon Abnos**  DEFENDANT: Lee Heimanowski, Seltzer, Caplan, McMahon, Vitek    DOES 1 TO 10	ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Ber number, and address).  Districts A brook for Days.	FOR COUNTY HERVONEY
Kansas City, MO 64113  TREPPICHE NO. 816-213-8000  FAND (OPPOWER  SMALADORES (IRRENA)  ATTORNEY FOR PAWED BarmOn Abnos, In Pro Per  SUPERIOR COURT of CALIFORNIA, COUNTY OF  SIMET ADDRESS 330 W. Broadway, San Diego, CA 92101  MANDADORESS  GITY AND 26 COOR  SRACHWARE Hall of Justice  PLAINTIFF; Damon Abnos  DEFENDANT: Lee Hejmanowski, Seltzer, Caplan, McMahon, Vitek  DOES 1TO 10  CONTRACT  COMPLAINT  AMENDED COMPLAINT (Number):  Jurisdiction (check all that apply):  ACTION IS A LIMITED CIVIL CASE  ACTION IS A LIMITED CIVIL CASE (exceeds \$10,000  ACTION IS RECLASSIFIED by this amended complaint or cross-complaint  from limitad to unlimited  from unlimited to limitad  Plaintiff (mame or names): Dee Hejmanowski, Seltzer, Caplan, McMahon, Vitek  and Does 1-10, inclusive  This pleasing, including stachments and exhibits, consists of the following number of pages:  2. Each plaintiff (name):  (3)  b   Plaintiff (name):  a.   has complaid with all fleening requirements as a fleensed (specify):  b.   Plaintiff (name):  a.   has complaid with the fictitious business name laws and is doing business under the fictitious name (apecify):  b.   Plaintiff (name):  (a)   a corporation qualified to do business in California  3. a. Each defendant named above is a natural person    except defendant named above is a natural person   except defendant (name):  (b)   a business organization, form unknown (c)   a corporation (name):  (d)   a public entity (describe):  (4)   a public entity (describe):  (5)   other (specify):  (6)   other (specify):  Peat till  Peat till  Answer  Amended Address  Answer  SACON PLANT (Name)   CASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ROUND (ASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ROUND (ASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ALLIMITED (PUL CASE (exceeds \$25,000)  ACTION IS ALLIMITED (PU		CIAIL
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<ol> <li>is excused from complying because (specify):</li> </ol>		
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8 This action is subject to Chil Code section 1812.10 Civil Code section 7. This court is the proper open because	2984.6.	
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Onto: April 10, 2006 Damon Abuss		
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COMPLAINT COMPLETE		-

www.scmv.com 619.685.3003 619.685.3100 FAX 2100 SYMPHONY TOWERS 750 B STREET SAN DIEGO, CALIFORNIA 92101

SELTZER | CAPLAN | MCMAHON | VITEK

CHRISTOPHER L. LUDMER, ESQ.

ludmer@scmv.com 619.685.3122 619.702.6895 fax

August 4, 2006

Damon Abnos 6301 Rockhill Road, Suite 102 Kansas City, Missouri 64132

Damon Abnos P.O. Box 22704 Kansas City, Missouri 64113

Re: Abnos adv. Lee Hejmanowski and Seltzer Caplan McMahon Vitek
Our File No. 05000.60424

Dear Mr. Abnos:

This is a follow-up to our telephone conversation on July 20, 2006 where I informed you that under the terms of the engagement letter you signed, any dispute arising out of that engagement was subject to mandatory arbitration rather than a lawsuit. You indicated to me that the reason you filed your lawsuit in San Diego Superior Court, case number GIC 864098, was to prevent the expiration of the statute of limitations. I asked you whether you would agree to enter into a stipulation to send the dispute to arbitration and you agreed in theory. However, you asked me to wait two weeks until the dispute with your ex-wife was resolved.

On August 1, and August 2, 2006, I spoke on the telephone with Mr. Michael Smith, Esq. Mr. Smith informed me that you were consulting with him regarding your dispute with this firm, but that you have not yet formally engaged him to represent you. After Mr. Smith represented that he had your authorization to discuss the case with me, I informed him of the substance of this letter, and our desire to move the case into arbitration as quickly as possible unless we first reached a more amicable settlement.

On August 3, 2006, I received a Notice of Case Management Conference scheduled by the court for September 1, 2006 at 11:15 a.m. in Department 64 of the San Diego Superior Court located at 330 W. Broadway, San Diego, California 92101. Given that the court is moving forward with a case that belongs in arbitration, I am asking you again to agree to voluntarily dismiss your lawsuit and commence arbitration proceedings. Please contact me as soon as possible at (619) 685-3122

JACK R. LEER
AMANDA L. HARRIS
MARNIE S. SKEEN
DAVID M. GREELEY
CHARLES B. WITHAM
RHONDA K. CRANDALL
SCOTT A. HILLER
ROBERT (ROBIN) M. TRAYLOR
LINDA PAPST de LEON
JOSEPH P. MARTINEZ
RICHARD A. CLEGG
G. SCOTT WILLIAMS
ANDREW D. BROOKS
JEFFREY B. HARRIS
MATTHEW M. MANDNEY

NORMAN T. SELTZER

GERALD L. MCMAHON

REGINALD A. VITEX
DAVID 3. DORNE
JAMES R. DAWE
BRIAN T. SELTZER
ELIZABETH A. SMITH-CHAVEZ

JOYCE A. MCCOY

DENNIS J. WICKHAM

JAMES P. DELPHEY

MICHAEL G. NARDI

THOMAS F. STEINKE NEAL P. PANISH SEAN T. HARGADEN DAVID J. ZUBKOFF CHARLES L. GOLDBERG

PATRICK Q. HALL MICHAEL A. LEDNE DANIEL A. ANDRIST J. SCOTT SCHEPER LEE E. HEJMANOWSKI

DANIEL E. EATON

GREGORY A. VEGA HOWARD J. BARNHORST 11 PAUL R. DATNOW

MONTY A. MCINTYRE VICTOR A. VILAPLANA

ELINOR T. MERIDETH

CHRISTINE M. LA PINTA
DANIEL W. ABBOTT
ANGELA A. BASSEYT
ALLISON C. SHANAHAN
ERIK L. SCHRAMER
JASON P. SWEENEY
JASON M. SANTANA
CLARICE A. ESTRADA
CHRISTOPHER L. LUDMER
NICHOLAS S. BARNHOAST
CHAD M. HARRIS
CHAD M. HARRIS

CYNTHIA MORGAN MICHAEL B, LEES JUSTINE M. PHILLIPS HOPE N, CHAU J, KEVIN MANN<sup>1</sup> TRACY A. WARREN

OF COUNSEL
M. CHRISTINE TENNISON

ADMITTED IN TEXAS ONLY

SELTZER | CAPLAN | McMAHON | VITEK

Mr. Damon Abnos August 4, 2006

. Page 2

and let me know whether you will agree to stipulate to send this dispute to arbitration. If you are unwilling to do so, as I indicated on July 20, 2006, I will be forced to file a Motion to Compel Arbitration and will seek to recover the costs incurred.

Very truly yours,

Christopher L. Ludmer

SELTZER CAPLAN McMAHON VITEK

A Law Corporation

	ANTORNOM de la Constitución de l	CM-110
Sadr & Bartera, A	T ATTORNEY (Name, State Rer number, and address):  DT C	FOR COURT USE ONLY
프랑스 사용하다 하는 사람들이 아니는 것이 없는 것이 없는 것이 없는 것이 없는 것이 없다.		
Kasra Sadr (SBN		
401 West A Street		
San Diego, CA 92	101	
TELEPHONE NO.: C	19-233-8460 FAX NO (Cotional): 619-203-1009	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name).		
SUPERIOR COURT OF	CALIFORNIA, COUNTY OF San Diego	
STREET ADDRESS: 330 T	Vest Broadway	
MAILING ADDRESS		
CITY AND ZIP CODE: San I	Niego CA 92101	
BRANCH NAME: Cent		
BRANCH NAME: CCIII.	at Division	
PLAINTIFF/PETITIOI	NER: Damon Abnos	
DEFENDANT/RESPOND	ENT: Lee Hejmanowski, et al	
-	CASE MANAGEMENT STATEMENT	CASE NUMBER:
Check one):	UNLIMITED CASE LIMITED CASE	GIC 864098
Check one):	(Amount demanded (Amount demanded is \$25,000)	010 001070
	exceeds \$25,000) or less)	
A CASE MANAGEME	NT CONFERENCE is scheduled as follows:	
0.7903674.6024760524		Div.: Room:
Date: 9/1/06		51V
Address of court (if diff	erent from the address above):	
INSTRUCT	ONS: All applicable boxes must be checked, and the specified	l information must be provided.
. Party or parties (a	nswer one):	
a. 🗸 This sta	tement is submitted by party (name): Damon Abnos	
	tement is submitted jointly by parties (names):	
D 1785 500	ionom to deprime jump, and provide the control of t	
	3	
Camplaint and ar	oss-complaint (to be answered by plaintiffs and cross-complainant	(s only)
. Complaint and cre	was filed on (dale): April 10, 2006	
a. The complaint	was med on today. A total on (data): Tuly 20, 2006	
b. L The cro	ss-complaint, if any, was filed on (date): July 20, 2006	
	and by alcialiffs and gross complainable only)	
S. Service (to be ans	wered by plaintiffs and cross-complainants only)	
	es named in the complaint and cross-complaint have been served,	or have appeared, or have been dismissed
b. The fol	owing parties named in the complaint or cross-complaint	
(1) [	have not been served (specify names and explain why not):	
(1)		
(2)	have been served but have not appeared and have not been	dismissed (specify names):
(2)	have had a default entered against them (specify names):	
(3) L		
c. The fol	owing additional parties may be added (specify names, nature of in	nvolvement in case, and the date by which
	ay be served):	
,	<b>,</b>	
Description of ca	se	1 M2A - M2
a. Type of case		ncluding causes of action):
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Malpractice		
		Page 1 of
Form Adopted for Mandatory Usi Judicial Council of California	CASE MANAGEMENT STATEMENT	Cni Ruins of Cour n.4e 21
CM-11C [Rev. January 1, 2005]		American LegalNot, Inc.

PLAINTIFF/PETITIONER: Danion Abnos	CASE NUMBER:
The STATE OF THE S	GIC 864098
DEFENDANT/RESPONDENT: Lee Hejmanowski, et al	
4. b. Provide a brief statement of the case, including any damages. (If personal injury dardamages claimed, including medical expenses to date [indicate source and amount], earnings to date, and estimated future lost earnings. If equitable relief is sought, destinated.	, estimated future medical expenses, lost
Defendants committed mal practice in their representation of client. I extension of this CMC while damages are finalized from the underlying	Plaintiff would like a 3 month
₩	
[[]] (If more space is needed, check this box and attach a page designated as Altach	ment 4b.)
E. Iver an applicated at	
<ol> <li>Jury or nonjury trial</li> <li>The party or parties request</li> <li>a jury trial</li> <li>a nonjury trial</li> <li>if more than</li> </ol>	one party, provide the name of each party
requesting a jury trial):	
6. Trial date	
a. The trial has been set for (date):	
b. No trial date has been set. This case will be ready for trial within 12 months of not, explain):	the date of the filing of the complaint (if
c. Dates on which parties or attorneys will not be available for trial (specify dates and e	explain reasons for unavailability):
November 2006 - January 2007	
notomost 2000 vidially 200	
7. Estimated length of trial	
The party or parties estimate that the trial will take (check one):	
a. days (specify number): 7	
b. hours (short causes) (specify):	
8. Trial representation (to be answered for each party) The party or parties will be represented at trial  by the attorney or party listed in	the caption by the following:
a. Attorney:	
b. Firm: c. Address:	
d. Telephone number:	
e. Fax number:	w.
f. E-mail address:	
g. Party represented: Additional representation is described in Attachment 8.	
Additional representation is described in Attachment 6.	
9. Preference	
This case is entitled to preference (specify code section):	
10. Alternative Dispute Resolution (ADR)	
a. Counsel has has not provided the ADR information package ide	entified in rule 201.9 to the client and has
reviewed ADR options with the client.	
b. All parties have agreed to a form of ADR. ADR will be completed by (date):	
c. The case has gone to an ADR process (indicate status):	
CM-110 [Rev. January 1, 2005] CASE MANAGEMENT STATEMENT	Page 2 of 4
ONOL MAINAGEMENT OTATEMENT	American LogalNel, Inc

PLAINTIFF; PETITIONER: Damon Abnos	CASE NUMBER
DEFENDANT/RESPONDENT: Lee Hejmanowski, et al	GIC 864098
<ul> <li>10. d. The party or parties are willing to participate in (check all that apply): <ol> <li>Mediation</li> <li>Nonbinding judicial arbitration under Code of Civil Procedure section arbitration under Cal. Rules of Court, rule 1612)</li> <li>Nonbinding judicial arbitration under Code of Civil Procedure section before trial; order required under Cal. Rules of Court, rule 1612)</li> <li>Binding judicial arbitration</li> <li>Binding private arbitration</li> <li>Neutral case evaluation</li> <li>Other (specify):</li> </ol> </li></ul>	and a superior of the superior
e.	recovery to the amount specified in Code of Civil
11. Settlement conference  The party or parties are willing to participate in an early settlement conference.	ce (specify when):
<ul> <li>12. Insurance</li> <li>a. Insurance carrier, if any, for party filing this statement (name):</li> <li>b. Reservation of rights: Yes No</li> <li>c. Coverage issues will significantly affect resolution of this case (explain):</li> </ul>	
<ul> <li>13. Jurisdiction Indicate any matters that may affect the court's jurisdiction or processing of this ca</li> <li>Bankruptcy Other (specify):</li> <li>Status:</li> </ul>	se, and describe the status.
14. Related cases, consolidation, and coordination a. There are companion, underlying, or related cases. (1) Name of case: (2) Name of court: (3) Case number: (4) Status: Additional cases are described in Attachment 14a. b. A motion to consolidate coordinate will be filed.	d by (name party):
15. Bifurcation The party or parties intend to file a motion for an order bifurcating, severing, action (specify moving party, type of motion, and reasons): Amended Complaint to add additional causes of action.	or coordinating the following issues or causes of
16. Other motions  The party or parties expect to file the following motions before trial (specify no Plaintiff does not agree to arbitration as to the negligence matter.)	
CM-110 [Rev. Jerusiy 1, 2005] CASE MANAGEMENT STATEME	NT Page 3 of 4 American LegalNet Inc.

vivew.USCounForms.com

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PLAINTIFFIPETITIONER: Damon Abnos	CASE NUMBER:
DEFENDANTIRESPONDENT: Lee Hejmanowski, et al	GIC 864098
17. Discovery  a The party or parties have completed all disc  b The following discovery will be completed by	overy. the date specified (describe all anticipated discovery):
	7.77
Sp	position of Defendants and witnesses ecial and form roggs eduction of documents
c The following discovery issues are anticipate	d (specify):
of Civil Procedure sections 90 through 98 wi	
	thdraw the case from the economic litigation procedures or for additional ecifically why economic litigation procedures relating to discovery or trial
19. Other issues	
	ditional matters be considered or determined at the case management
	) has come in. a 3 month extension of the CMC is requested so well as "damages" determined by the underlying case.
<ol> <li>Meet and confer</li> <li>a.                The party or parties have met and conferred Court (if not, explain):</li> </ol>	with all parties on all subjects required by rule 212 of the California Rules of
<ul> <li>After meeting and conferring as required by rule 21 (specify):</li> </ul>	2 of the California Rules of Court, the parties agree on the following
<ol> <li>Case management orders         Previous case management orders in this case are (c     </li> </ol>	neck one): none attached as Attachment 21.
22. Total number of pages attached (if any):	
	pared to discuss the status of discovery and ADR, as well as other issues enter into stipulations on these issues at the time of the case management re required.
Date: 8/18/06	
Kasra Sadr, Esq. (TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
(TYPE OR PRIKT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)  Additional signatures are attached
CASE MA	NAGEMENT STATEMENT  Page 4 of 4  Arr arcon LegalNet, Inc.  Www. US Courte arrangements, com

C	ase 3:08-cv-00201-DMS-WMC	Document 2-4	Filed 02	/27/2008	Page 13 of 33
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1	Christopher L. Ludmer, Esq. (SBN	209411)		F	Clerk of the Superior Court
2	SELTZER CAPLAN McMAHON VI A Law Corporation	TEK			SEP 2 9 2006
3 4	750 B Street, 2100 Symphony Tow San Diego, California 92101-8177 Telephone: (619) 685-3003 Facsimile: (619) 685-3100	/ers		Ву	E. Jensen_Deputy
5	Attorneys for Defendants LEE HEJ	MANOWSKI and	d SELTZER	CAPLAN	McMAHON VITEK
6	SUPERIOR COURT				
7		(CENTRAL DIV	0		
8	DAMON ABNOS, an individual,	)	CASE NO.	GIC 86409	98
9	Plaintiff,	{	NOTICE O		AND MOTION
10	VS.	{	TO COMP	EL ANDITA	ATION
11	LEE HEJMANOWSKI, an individua SELTZER CAPLAN McMAHON VI	al;	Date: Time:	November 1:30 p.m.	3, 2006
12	Law Corporation; and DOES 1 to 1		Dept.:	64	ım R. Nevitt, Jr.
13	Defendants.	{	Judge: Complaint Trial Date:	Filed: Apr	ril 10, 2006
14	s	{	mai Date.	INO	Set
15	ž	{			
16		{			E)
17 18	SELTZER CAPLAN McMAHON V Law Corporation,	ITEK, a	Unlimited (	Civil Case	
19	Cross-Compla	inant, (			
20	VS.	{			
21	DAMON ABNOS, an individual,	<b>\</b>			
22	Cross-Defend	ant.			
23					
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			36		
	NOTICE OF MOTI	ON AND MOTION	TO COMPEL A	RRITRATIO	N

### TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 3, 2006, at 1:30 p.m., or as soon thereafter as this matter can be heard, in Department 64 of the above-entitled court, Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK (collectively "SCMV") will and hereby do move for an order to compel arbitration of the disputes arising out of the agreement in writing of the parties made on or about November 27, 2003.

Pursuant to Code of Civil Procedure section 1281.2, SCMV moves to compel arbitration based on the fact that a dispute exists between the parties and the agreement between them provides for mandatory and binding arbitration of disputes arising out of the agreement.

The motion will be based upon this notice and motion; the accompanying memorandum of points and authorities served and filed herewith, and the Notice of Lodgment of Exhibits and Declaration of Christopher L. Ludmer, served and filed in support of SCMV's motion to compel; the pleadings, records and files in this action; and such further oral and documentary evidence and argument as may be presented at or before the hearing.

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Dated: September 28, 2006

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SELTZER CAPLAN MCMAHON VITEK

A Law Corporation

By:

Christopher L. Ludmer ATTORNEYS FOR Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK

Clerk of the Superior Court Christopher L. Ludmer, Esq. (SBN 208411) SEP 29 2006 SELTZER CAPLAN McMAHON VITEK A Law Corporation By: E. Jensen Deputy 750 B Street, 2100 Symphony Towers San Diego, California 92101-8177 Telephone: (619) 685-3003 Facsimile: (619) 685-3100 Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK 6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (CENTRAL DIVISION) 7 CASE NO. GIC 864098 8 DAMON ABNOS, an individual, DEFENDANTS LEE HEJMANOWSKI 9 Plaintiff, AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT 10 VS. SELTZER CAPLAN McMAHON VITEK'S MEMORANDUM OF POINTS 11 LEE HEJMANOWSKI, an individual; AND AUTHORITIES IN SUPPORT OF SELTZER CAPLAN McMAHON VITEK, a MOTION TO COMPEL ARBITRATION 12 Law Corporation; and DOES 1 to 10, 13 Defendants. Date: November 3, 2006 Time: 1:30 p.m. 14 Dept.: 64 15 Judge: Hon. William R. Nevitt, Jr. Complaint Filed: April 10, 2006 Not Set 16 Trial Date: 17 Unlimited Civil Case SELTZER CAPLAN McMAHON VITEK, a 18 Law Corporation, 19 Cross-Complainant, 20 VS 21 DAMON ABNOS, an individual, 22 Cross-Defendant. 23 24 25 26 27 28

DEFENDANTS LEE HEJMANOWSKI AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT SELTZER CAPLAN McMAHON VITEK'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION

legal fees that Abnos refuses to pay. (See, generally, SCMV's Answer and Cross-Complaint.)

The Agreement provides for arbitration of any dispute that may arise under the Agreement or over services rendered, and that any such arbitration shall be in San Diego, California. Specifically, the first paragraph of Exhibit A to the Agreement, entitled "Arbitration Agreement" provides:

THE UNDERSIGNED AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS OR DISPUTES (COLLECTIVELY "DISPUTES") WHICH ARISE FROM OR RELATE TO THE ENGAGEMENT OF OR SERVICES RENDERED OR TO BE RENDERED BY, SELTZER CAPLAN MCMAHON VITEK (INCLUDING ITS ATTORNEYS AND EMPLOYEES) (COLLECTIVELY BE DETERMINED EXCLUSIVELY BY SHALL LAW FIRM") SUBMISSION TO MANDATORY, BINDING ARBITRATION, INSTEAD OF BY A LAWSUIT OR RESORT TO COURT ACTION. SUCH DISPUTES SHALL INCLUDE, WITHOUT LIMITATION, DISPUTES AS TO FEES, COSTS OR PROFESSIONAL MALPRACTICE (THAT IS, AS TO WHETHER ANY OR UNNECESSARY RENDERED WERE SERVICES LEGAL IMPROPERLY, NEGLIGENTLY, WERE OR UNAUTHORIZED INCOMPETENTLY RENDERED).

(Emphasis added) (capitalization in original.)

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On August 4, 2006, SCMV sent a letter to Abnos, which he confirmed receiving, containing a written demand for arbitration, pursuant to the arbitration clause in the Agreement. (Declaration of Christopher L. Ludmer, ¶¶ 4-5.) A true and correct copy of SCMV's demand for arbitration is attached to SCMV's Notice of Lodgment as Exhibit "2" and is incorporated herein by this reference.

SCMV's August 4, 2006 demand for arbitration notified Abnos that if he did not submit to arbitration, SCMV would file a Motion to Compel. (Notice of Lodgment, Exhibit "2".) After initially agreeing in theory to arbitration, Abnos rejected SCMV's demand. (Declaration of Christopher L. Ludmer, ¶¶ 3, 5.) In his Case Management Statement, Abnos, through counsel, stated, "Plaintiff does not agree to arbitration as to the negligence matter." (Abnos' Case Management Statement, ¶ 16, attached to SCMV's Notice of Lodgment as Exhibit "3.") Accordingly, Abnos has refused to comply with the terms of the Agreement and to submit the dispute to arbitration.

DEFENDANTS LEE HEJMANOWSKI AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT SELTZER CAPLAN McMAHON VITEK'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION

III.

### SCMV IS ENTITLED TO AN ORDER COMPELLING ARBITRATION OF THE PARTIES' DISPUTES UNDER THE AGREEMENT.

Based upon the foregoing facts, SCMV is entitled to an order compelling Abnos to arbitrate the parties' dispute under the Agreement. The rules relative to arbitration "reflect the strong legislative policy favoring arbitration." (Morris v. Zuckerman (1967) 257 Cal.App.2d 91, 95.) As a general rule, a court must order arbitration if it determines that a written agreement to arbitrate the controversy exists. (See, Code Civ. Proc. § 1281.2.) Thus, a court has no discretion but to order arbitration, where the petitioner is a party to an arbitration agreement and alleges the existence of a written agreement to arbitrate and the respondent's refusal to arbitrate, and where the court determines that an agreement to arbitrate a controversy exists. (See, Morris v. Zuckerman, supra, at 95-96.) As the Court of Appeal explained, "A heavy presumption weighs the scales in favor of arbitrability; an order directing arbitration should be granted 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Id. at 96 [citation omitted].)

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (Code Civ. Proc. § 1281.2) The Petition must be prepared in accordance with the rules applicable to motions. (Cal. Rule Ct. 303(a)(2).) Substantively, the petition must allege: (1) specific facts demonstrating the existence of an arbitrable controversy (*Graphic Arts Int'l Union v. Oakland Nat'l Engraving Co.* (1986) 185 Cal. App.3d 775, 781); (2) the arbitration clause under which the petition is made (Cal. Rule Ct. 371); and (3) that the opposing party refuses to arbitrate the controversy. (*Spear v. California State Auto. Ass'n* (1992) 2 Cal.4th 1035, 1041.)

SCMV has complied with all procedural and substantive requirements for compelling arbitration. In accordance with the express terms of the parties' written contract, the parties must arbitrate their dispute. SCMV therefore requests that this Court order Abnos to submit

to compulsory and binding arbitration in San Diego, California, pursuant to the parties'

IV.

### CONCLUSION

For the foregoing reasons, SCMV respectfully requests this Court enter the accompanying order compelling Abnos to submit to binding arbitration of all disputes arising out of his 2003 Agreement with SCMV, including his claim for legal malpractice.

Dated: September 28, 2006

SELTZER CAPLAN MCMAHON VITEK

A Law Corporation

By:

Christopher L. Ludmer

ATTORNEYS FOR Defendants LEE
HEJMANOWSKI and SELTZER CAPLAN
McMAHON VITEK and Cross-Complainant
SELTZER CAPLAN McMAHON VITEK

DEFENDANTS LEE HEJMANOWSKI AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT SELTZER CAPLAN McMAHON VITEK'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION

		F Clerk of the Superior Court
		Clerk of the Superior Court
اا	Christopher L. Ludmer, Esq. (SBN 208411) SELTZER CAPLAN McMAHON VITEK	SEP 2 9 2006
3	A Law Corporation 750 B Street, 2100 Symphony Towers San Diego, California 92101-8177	By: E. Jensen Deputy
4	Telephone: (619) 685-3003 Facsimile: (619) 685-3100	
5	Attorneys for Defendants LEE HEJMANOWSKI a	nd SELTZER CAPLAN McMAHON VITEK
6	SUPERIOR COURT OF CALIFORN	NIA, COUNTY OF SAN DIEGO
7	(CENTRAL D	IVISION)
8	DAMON ABNOS, an individual,	CASE NO. GIC 864098
9	Plaintiff,	DECLARATION OF CHRISTOPHER L. LUDMER IN SUPPORT OF MOTION
10	vs.	TO COMPEL ARBITRATION BY DEFENDANTS LEE HEJMANOWSKI
11	LEE HEJMANOWSKI, an individual;	AND SELTZER CAPLAN McMAHON VITEK AND CROSS-COMPLAINANT
12	SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10,	SELTZER CAPLAN McMAHON VITEK
13	Defendants.	Date: November 3, 2006
14		) Time: 1:30 p.m. ) Dept.: 64
15		) Judge: Hon. William R. Nevitt, Jr. ) Complaint Filed: April 10, 2006
16		) Trial Date: Not Set
17		) Unlimited Civil Case
18	SELTZER CAPLAN McMAHON VITEK, a Law Corporation,	) )
19	Cross-Complainant,	<b>\</b>
20	vs.	<b>\</b>
21	DAMON ABNOS, an individual,	<b>\</b>
22	Cross-Defendant.	<b>\</b>
23		)
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	DECLARATION OF CHRISTOPHER L. LUDMER IN SI	UPPORT OF MOTION TO COMPEL ARBITRATION

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- I, Christopher L. Ludmer, declare as follows:
- I am an associate attorney of Seltzer Caplan McMahon Vitek ("SCMV"), attorneys of record for Defendants Lee Hejmanowski and SCMV, and Cross-I have personal knowledge of the facts set forth in this Complainant SCMV. declaration and could and would testify competently to those facts if called as a witness in this matter.
- I have reviewed the files concerning SCMV's prior representation of 2. Plaintiff and Cross-Defendant Damon Abnos ("Mr. Abnos") and am familiar with the contents and maters therein. In November 2003, Mr. Abnos engaged SCMV to 10 represent him in his divorce. (Attached as Exhibit "1" to the Notice of Lodgment filed with this declaration is a true and correct copy of the engagement letter Mr. Abnos signed that includes an Arbitration Agreement.) In about October 2004, Mr. Abnos terminated SCMV's representation and retained new counsel.
  - On July 20, 2006, I spoke on the telephone with Mr. Abnos, and informed 3. him that the lawsuit he filed was improper because the agreement between the parties provided for mandatory arbitration of this dispute. Mr. Abnos acknowledged that the agreement did require arbitration, and stated that he agreed to arbitration in theory but preferred to address that and other issues once his underlying trial was completed sometime around July 28, 2006.
  - On August 4, 2006, on SCMV's behalf, I sent by U.S. Mail to Mr. Abnos a written demand that Mr. Abnos agree to arbitration, pursuant to the arbitration clause in the agreement between SCMV and Mr. Abnos. Attached as Exhibit "2" to the Notice of Lodgment filed with this declaration is a true and correct copy of SCMV's demand for arbitration.
- On August 9, 2006, Mr. Abnos telephoned me at my office and 5. 26 acknowledged that he received the August 4, 2006 written demand for arbitration. For the first time, Mr. Abnos indicated that he might not agree to arbitration, and that his lawyers told him that the arbitration agreement he signed might not bar a jury trial.

-	6. On August 18, 2006, Mr. Abnos, through counsel, served SCMV with his
	Case Management Statement. In his Case Management Statement, Mr. Abnos
-	stated, "Plaintiff does not agree to arbitration as to the negligence matter." (Abnos'
	Case Management Statement, ¶ 16.) Attached as Exhibit "3" to the Notice of
	Lodgment filed with this declaration is a true and correct copy of Abnos' Case
	Management Statement received by SCMV.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Date: September 24, 2006.

CHRISTOPHER L. LUDMER

NORMAN T. SELTZER ROBERT CAPLAN GERALD L MCMAHON REGINALD A VITER DAVID I DORNE JAMES & DAWE BRIAN T. SELTZER ELIZABETH & SHITH-CHAVEZ JOYCE A. MCCOY DENNIS J. WICKHAM JOHN H ALSPAUGH JAMES P DELPHEY ELINOR T. MERIDETH HICHAEL G HARDI THOMAS F STEINKE NEAL P PANISH SEAR T HARGADEN DAVID J. ZUSKOFF CHARLES & GOLDBERG PATRICK Q. HALL HICHAEL A LEDNE DANIEL A. ANDRIST J SCOTT SCHEPER LEE E HEJMANOWSKI DANIEL E EATON HONTY A HEINTYRE GREGORY A. VEGA HOWARD J. DARNHORST II PAUL R DATHOW JACK R LEER AMANDA L. HARRIS MARNIE S. SKEEN DAVID H. GREELEY CHARLES B WITHAM AHONDA K CRANDALL SCOTT A MILLER RODERT (RODIN) H. TRAYLOR LINDA PAPST de LEON JOSEPH P MARTINEZ RICHARD A CLEGG G. SCOTT WILLIAMS

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CHRISTOPHER L. LUDMER, ESQ.

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December 15, 2006

VIA FACSIMILE AND U.S. MAIL

Joseph G. Maiorano, Esq. The Law Offices of Joseph Guy Maiorano Emerald Plaza 402 West Broadway, 27th Floor San Diego, California 92101

Re:

Abnos v. Hejmanowski, et al. Our File No.: 05000.60424

Dear Mr. Maiorano:

On Monday, December 11, 2006, I left a voicemail at your office requesting an update regarding whether your client had approved your prior selection of Judge Hayden as an arbitrator. As you know, when we spoke before Thanksgiving I advised you that we had no problem with Judge Hayden as an arbitrator, but that you should be aware of Judge Hayden's relationship with Reg Vitek of this firm through the Louis M. Welsh Inn of Court, and my own participation in that Inn. We agreed that should not present a problem, but that you should inform your client on the matter. You promised to do so, and get back to me with the result. I have not heard from you since we discussed the matter, and you have not yet returned my telephone call from December 11, 2006. Accordingly, I am writing to request an update on where we stand. While the holidays will likely prevent us from moving forward immediately, I do not wish to delay the commencement of arbitration any longer than absolutely necessary.

I look forward to hearing from you so that we may quickly agree on an arbitrator, or submit the case and have one assigned.

SELTZER | CAPLAN | McMAHON | VITEK Joseph G. Maiorano, Esq. December 15, 2006 Page 2

If you have any questions, please feel free to call me at (619) 685-3122.

Very truly yours,

Christopher L. Ludmer, Esq.

SELTZER CAPLAN McMAHON VITEK

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### SELTZER | CAPLAN | McMAHON | VITEK

A LAW CORPORATION

#### FAX COVER SHEET

TO:

Joseph G. Maiorano, Esq.

ATTN: ANN

FAX

TELEPHONE

NUMBER:

(619) 230-1839

NUMBER: (619) 230-1612

Christopher L. Ludmer, Esq.

DATE:

FROM:

December 15, 2006

DOCUMENT

TRANSMITTED:

Letter of today's date from Mr. Ludmer to Mr. Maiorano.

OUR FILE NUMBER:

05000.60424 ORIGINAL: [X] WILL BE [] WILL NOT BE

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OUR CASE NAME:

Abnos v. Hejmanowski, et al.

CONFIRMATION

ADDITIONAL COMMENTS:

NUMBER:

(619) 685-3122

TOTAL NUMBER OF PAGES IN THIS TRANSMISSION: 3 (including cover sheet)

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(619) 685-3003. Thank you.

Fax Operator for SCMV: Sheri Garcia

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TO:

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NUMBER:

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TELEPHONE

NUMBER (619) 2 10 1512

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JOYCE A HCCOY

DENNIS J WICKHAM

JOHN H ALSPAUGH

JAMES P DELPHEY ELINOR T MERIDETH HICHAEL G NARDI THOMAS F STEINKE NEAL P PANISH

SEAN T HARGADEN DAVID J ZUBKOFF CHARLES L. GOLDBERG PATRICK Q HALL MICHAEL A LEONE

DANIEL A ANDRIST ) SCOTT SCHEPER LEE E HEJMANOWSKI DANIEL E EATON MONTY A HEINTYRE GREGORY A VEGA

HOWARD J BARNHORST II PAUL R DATNOW

TACK B LEER AMANDA L HARRIS

MARNIE S SKEEN

SCOTT A MILLER ROBERT (ROBIN) H TRAYLOR LINDA PAPST de LEON

JOSEPH P MARTINEZ

RICHARD & CLEGG

G SCOTT WILLIAMS JEFFREY D. HARRIS ANDREW D BROOKS MATTHEW M MAHONEY

CHRISTINE M LA PINTA DANIEL W ABBOTT ANGELA A BASSETT

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JASON M SANTANA CLARICE A ESTRADA

MICHAEL D LEES JUSTINE M PHILLIPS

TRACY A WARREN HICHELE HENTRICH HARBIN WES E HENRICKSEN

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DAVID M GREELLY CHARLES B WITHAM RHONDA K CRANDALL

ROBERT CAPLAN

Filed 02/27/2008

Page 28 of 33

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January 26, 2007

### VIA FACSIMILE AND U.S. MAIL

Joseph G. Maiorano, Esq. The Law Offices of Joseph Guy Maiorano Emerald Plaza 402 West Broadway, 27th Floor San Diego, California 92101

Re:

Abnos v. Hejmanowski, et al. Our File No.: 05000.60424

Dear Mr. Maiorano:

As you know, I have sent you several letters and left several telephone messages over the past two months in an effort to agree on an arbitrator and move forward with this case. Despite my attempts, and the fact that it was your client who initiated this dispute, you have not responded in any way.

I ask you again for the courtesy of a response. In the event you fail to respond within a reasonable time, I plan to submit the case and have an arbitrator assigned pursuant to the AAA arbitration rules.

Very truly yours,

M CHRISTINE TENNISON COMITTED IN TEXAS DILY

Christopher L. Ludmer, Esq.

SELTZER CAPLAN McMAHON VITEK

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A LAW CORPORATION

#### FAX COVER SHEET

TO:

Joseph G. Maiorano, Esq.

ATTN: ANN

FAX

NUMBER:

(619) 230-1839

TELEPHONE

(619) 230-1612 NUMBER:

FROM:

Christopher L. Ludmer, Esq.

DATE:

January 26, 2007

DOCUMENT

TRANSMITTED:

Correspondence of today's date

OUR FILE NUMBER:

05000.60424

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OUR CASE NAME:

Abnos v. Hejmanowski, et al.

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(619) 685-3003. Thank you.

Fax Operator for SCMV: Melanie Butler

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#### Case 3:08-cv-00201-DMS-WMC Filed 02/27/2008 Page 30 of 33 Document 2-4

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January 30, 2007

VIA U.S. MAIL

Joseph G. Maiorano, Esq. The Law Offices of Joseph Guy Maiorano Emerald Plaza 402 West Broadway, 27<sup>th</sup> Floor San Diego, California 92101

Re:

Abnos v. Hejmanowski, et al. Our File No.: 05000.60424

Dear Mr. Maiorano:

Thank you for your voicemail yesterday in response to my January 26, 2007 letter regarding our attempts to select an arbitrator. While I appreciate your response, your suggestion of the Hon. Alice Sullivan seems to be moving us backward.

As background, you will recall that you originally suggested Judge Sullivan on November 8, 2006. On November 10, 2006, I declined your suggestion, and offered two others: the Hon. Herbert B. Hoffman and the Hon. James R. Milliken. I have enclosed your letter and my response for your reference. You in turn declined Judges Hoffman and Milliken. At that point we spoke by telephone several times. I told you that we would agree to the Hon. Richard Haden—whom you suggested along with Judge Sullivan on November 8, 2006—but advised you of his relationship with this firm through the Louis M. Welsh American Inn of Court. I have enclosed my December 15, 2006 letter to you in that regard as well. You informed me that Judge Haden was still agreeable to you, and that you would speak with your client to obtain his consent. It was at that point that I did not hear back from you for approximately six weeks until your voicemail on January 29, 2007. Instead of your response concerning Judge Haden that I expected, you again suggested Judge Sullivan.

If you meant to say that Judge Haden was acceptable, then we can move forward in agreement. On the other hand, if you did intend to suggest Judge Sullivan once again, then we are moving in the wrong direction. In that event, I see little point in any further back-and-forth attempting to agree on an arbitrator. We have been at that for three months now, to no avail. Delaying this matter further for conceivably interminable negotiations will not serve our clients.

SELTZER | CAPLAN | McMAHON | VITEK Joseph G. Maiorano, Esq. January 30, 2007 Page 2

I understand that you will be away from your office for the rest of this week. Accordingly, I ask that you please inform me whether you and your client agree to Judge Haden no later than Friday, February 9, 2007. In the event you inform me that Judge Haden is not acceptable, or if I do not hear from you by that date, I will submit a demand for arbitration to AAA and have a neutral arbitrator assigned in accordance with AAA rules.

I thank you in advance for your consideration and cooperation.

Yours very truly

Christopher L. Ludmer, Esq.

CLL:mab Encls.